

**Functional Series 200 – Programming Policy**  
**ADS Chapter 221 – USAID’s Procedures for Implementing International**  
**Agreements for Tied and Untied Aid**

**\*This is a new ADS chapter.**

**Table of Contents**

<b><u>221.1</u></b>	<b><u>OVERVIEW</u></b> .....	<b><u>2</u></b>
<b><u>221.2</u></b>	<b><u>PRIMARY RESPONSIBILITIES</u></b> .....	<b><u>3</u></b>
<b><u>221.3</u></b>	<b><u>POLICY AND PROCEDURES</u></b> .....	<b><u>6</u></b>
<b><u>221.3.1</u></b>	<b><u>Summary of the Terms for the DAC Recommendation</u></b> .....	<b><u>7</u></b>
<b><u>221.3.1.1</u></b>	<b><u>The DAC Recommendation to Untie Aid to the LDCs</u></b> .....	<b><u>8</u></b>
<b><u>221.3.1.2</u></b>	<b><u>Geographic Scope</u></b> .....	<b><u>8</u></b>
<b><u>221.3.1.3</u></b>	<b><u>Procurement Actions Covered by the Recommendation</u></b> .....	<b><u>8</u></b>
<b><u>221.3.1.4</u></b>	<b><u>Numerical Threshold</u></b> .....	<b><u>8</u></b>
<b><u>221.3.1.5</u></b>	<b><u>Covered Activities</u></b> .....	<b><u>9</u></b>
<b><u>221.3.1.6</u></b>	<b><u>Covered Categories of Procurement Action</u></b> .....	<b><u>9</u></b>
<b><u>221.3.1.7</u></b>	<b><u>Exclusions From the Recommendation</u></b> .....	<b><u>10</u></b>
<b><u>221.3.1.8</u></b>	<b><u>Projects or Activities With Multiple Elements</u></b> .....	<b><u>11</u></b>
<b><u>221.3.1.9</u></b>	<b><u>Ex Ante Notification of the Covered Procurement Action</u></b> .....	<b><u>11</u></b>
<b><u>221.3.1.10</u></b>	<b><u>Derogation</u></b> .....	<b><u>12</u></b>
<b><u>221.3.1.11</u></b>	<b><u>Exchange of Information Procedures</u></b> .....	<b><u>13</u></b>
<b><u>221.3.1.12</u></b>	<b><u>Information on Contract and Grant Awardees Under the DAC</u></b> <b><u>Recommendation for Covered Actions</u></b> .....	<b><u>15</u></b>
<b><u>221.3.1.13</u></b>	<b><u>Reference Indicators Matrix</u></b> .....	<b><u>15</u></b>
<b><u>221.3.2</u></b>	<b><u>Summary of the Terms for the OECD Arrangement</u></b> .....	<b><u>16</u></b>
<b><u>221.3.2.1</u></b>	<b><u>OECD Arrangement Requirements</u></b> .....	<b><u>16</u></b>
<b><u>221.3.2.2</u></b>	<b><u>Description of a Capital Project</u></b> .....	<b><u>17</u></b>
<b><u>221.3.2.3</u></b>	<b><u>Geographic Scope</u></b> .....	<b><u>17</u></b>
<b><u>221.3.2.4</u></b>	<b><u>OECD Ex Ante Notifications</u></b> .....	<b><u>17</u></b>
<b><u>221.3.2.5</u></b>	<b><u>Tied Aid Consultation Procedures for Mixed Credits</u></b> .....	<b><u>18</u></b>
<b><u>221.4</u></b>	<b><u>MANDATORY REFERENCES</u></b> .....	<b><u>19</u></b>
<b><u>221.4.1</u></b>	<b><u>External Mandatory References</u></b> .....	<b><u>19</u></b>
<b><u>221.4.2</u></b>	<b><u>Internal Mandatory References</u></b> .....	<b><u>20</u></b>
<b><u>221.5</u></b>	<b><u>ADDITIONAL HELP</u></b> .....	<b><u>20</u></b>
<b><u>221.6</u></b>	<b><u>DEFINITIONS</u></b> .....	<b><u>20</u></b>

## **ADS Chapter 221 – USAID’s Procedures for Implementing International Agreements for Tied and Untied Aid**

\*This is a new ADS chapter.

### **221.1 OVERVIEW**

Effective Date – 01/01/2002

This ADS chapter establishes the policy and procedures for implementing the U.S. Government’s (USG’s) agreements for tied and [untied aid](#). This chapter includes:

- Country groupings covered under each agreement;
- [Procurement actions](#) covered by each agreement;
- Numerical thresholds that apply to the covered procurement actions;
- Exclusions from coverage;
- Consultation procedures for “[capital projects](#)” financed with a combination of grants, loans, guarantees, and private sector funds;
- Reporting requirements to international organizations; and
- Responsibilities of USAID/W and the Missions.

The United States is a party to two international agreements governing the use of tied and untied aid.

a. The first agreement is the Development Assistance Committee’s (DAC) “Recommendation to Untie Aid to the [Least Developed Countries](#)” (LDCs) reached in May 2001. The Recommendation requires donors to procure specified goods and services from worldwide sources (source/origin code 935) for “covered” programs and activities in the LDCs.

Under the DAC Recommendation, USAID is expected to:

- Untie (establish source/origin code 935 for) specified categories of goods and services with a value of \$900,000 or more to the LDCs.
- Report these actions (which are called notifications) to the DAC.
- Provide information on aggregate levels of tied and untied aid.

The following categories of procurement actions will be covered by the Recommendation: capital [projects](#), capital equipment, capital-related supplies and services, and discrete “physical” commodities.

The following categories of procurement actions are excluded from the Recommendation: food aid (Title II and III), transport of food aid by vessel, technical assistance (other than the covered items), and assistance to NGOs for non-procurement related activities).

**b.** The second agreement is the Organization for Economic Cooperation and Development’s (OECD) “Arrangement on Guidelines for Officially Supported Export Credits” also known as the Helsinki Agreement reached in 1992. The Arrangement sets the international rules for government financing of tied (source/origin codes 000 and 941) “trade related activities” (defined operationally by USAID as capital projects, capital equipment, and capital-related [commodity](#) procurements) that are provided to developing countries using grants, loans, and guarantees. A capital project can be a standalone activity or part of a broad-based activity. The USG is a Participant in the Arrangement and USAID is, therefore, subject to Arrangement rules and procedures, as are virtually all USG agencies with international financing programs.

Under the OECD Arrangement, USAID will provide information to the OECD (called notifications) on planned capital projects of \$2.6 million or more (regardless of the combination of funding sources). USAID has worked out an understanding with Treasury to use this threshold (which is higher than the OECD requirement) in order to gain experience with this notification process. The threshold will be adjusted downward in 2003 to comply explicitly with the OECD requirements.

USAID also will require consultations between the originating office or Mission and both PPC and GC in the event that a proposed capital project is financed with any combination of (a) USAID grants, loans, or guarantees, and (b) export credits (e.g., Export Import Bank loans) or private sector financing. A consultation is required regardless of the amount of the capital project.

## **221.2 PRIMARY RESPONSIBILITIES**

Effective Date – 01/01/2002

### **a. Bureau for Policy and Program Coordination (PPC)**

PPC is responsible for setting Agency-wide policy for implementing and complying with the provisions of the DAC Recommendation and the OECD Arrangement. These responsibilities include, but are not limited to

(1) Determining procurement actions covered by the DAC Recommendation and the OECD Arrangement, jointly with the Office of General Counsel (GC) and The Bureau for Management, Office of Procurement (M/OP).

- (2) Determining procurement actions excluded by the DAC Recommendation and the OECD Arrangement, jointly with GC and M/OP.
- (3) Revising this ADS chapter based on USG negotiated changes in the DAC Recommendation and the OECD Arrangement.
- (4) Submitting the data to the DAC required for the "Reference Indicators Matrix in the DAC Recommendation."
- (5) Coordinating with M/OP in the design of the requirements for information systems to collect and compile data for the DAC Recommendation.
- (6) Preparing an annual country profile setting out positions for the Reference Indicators Matrix in the DAC Recommendation.
- (7) Providing the notification of covered procurement actions to the DAC and the OECD.
- (8) Establishing procedures, in coordination with other U.S. government agencies, for requesting additional information on untied aid procurements (offers) by other donors.
- (9) Determining the circumstances in which USAID will "derogate" (that is, depart from its requirements by waiving the untied status of a procurement or procurements) from the DAC Recommendation, and provide the required justification to the Secretary - General of the OECD and the DAC Chair.
- (10) Providing annual reports to the DAC on contract awards for procurements covered by the DAC Recommendation for each calendar year.
- (11) Developing annual estimates of tied and untied procurement using source/origin codes, by Mission, region and Bureau.
- (12) Developing, in cooperation with other USG agencies, procedures for linking USG and DAC web sites to provide procurement notification information to U.S. exporters for bidding purposes.
- (13) Conducting annual reviews, with other USG agencies, of USAID's efforts to implement the DAC Recommendation and the OECD Arrangement.
- (14) Leading USAID consultations with the Treasury Department on the financial arrangements for individual capital projects that are expected to be financed with either a loan, or a combination of a loan and grant.

**b. Office of the General Counsel (GC)**

- (1) Ensuring that the DAC Recommendation and any subsequent changes or amendments are consistent with the Foreign Assistance Act of 1961, as amended (FAA) and other relevant U.S. laws.
- (2) Reviewing, on an ongoing basis, existing legal authorities and USAID procurement policies for consistency with the DAC Recommendation and the OECD Arrangement.
- (3) Advising and counseling PPC and M/OP on USAID policy changes that may be brought about by the DAC Recommendation and OECD Arrangement as well as on necessary changes to USAID implementation policies required by changes in foreign assistance and procurement legislation.
- (4) Ensuring that USAID administration of the DAC Recommendation and OECD Arrangement is consistent with USAID anti-bribery and corruption policies.

Assisting PPC in the annual reporting requirements on the DAC Recommendation, especially with respect to changes in legislation, best endeavors, and procurement policies.

- (6) Determining procurement actions covered by the DAC Recommendation and the OECD Arrangement, jointly with PPC and M/OP.
- (7) Determining procurement actions excluded by the DAC Recommendation and the OECD Arrangement, jointly with PPC and M/OP.

**c. Bureau for Management, Office of Procurement (M/OP)**

- (1) Coordinating with PPC and GC to ensure that policy on source/origin and nationality support Agency compliance with current and future OECD and DAC agreements.
- (2) Developing and revising, in coordination with PPC, internal procedures to obtain procurement information for the DAC and OECD notification systems including but not limited to information on source/origin and nationality of [solicitations](#) and awards Agency-wide, and information on upcoming solicitations for actions covered by the DAC Recommendation and OECD Arrangement.
- (3) Developing internal procedures to ensure that source/origin and nationality codes are adhered to by the cognizant technical office.
- (4) Complying with USAID procedures for input to any information system or process necessary to fulfill the requirements of the DAC Recommendation or OECD Arrangement.

**d. Bureaus, Offices, and Missions**

- (1) Consulting with PPC, as early as possible, on any procurement activity expected to be financed with a loan or a combination of a loan and a grant.
- (2) Generating, in consultation with PPC and M/OP, the information necessary for the notifications under the DAC Recommendation and OECD Arrangement.
- (3) Ensuring that the appropriate source/origin, and nationality codes are included in every [FedBizOpps notice](#) for a USAID funded contract.
- (4) Providing to M/OP and PPC accurate information on the identity of the winning contractor(s) for all untied aid procurements covered by the DAC Recommendation.

**221.3 POLICY AND PROCEDURES**

Effective Date – 01/01/2002

A quick summary of the requirements and procedures follows.

- a. Under the DAC Recommendation, USAID is expected to
  - Untie (establish source/origin code 935 for) specified categories of goods and services with a value of \$900,000 or more to the LDCs.
  - Report these actions (which are called notifications) to the DAC.
  - Provide information on aggregate levels of tied and untied aid.
- b. Under the OECD Arrangement, USAID is expected to
  - Provide information to the OECD (called notifications) on planned capital projects (source/origin code 000, 935, and 941) of \$2.6 million or more (regardless of the combination of funding sources). These notifications are required for all country groupings. (USAID has worked out an understanding with Treasury to use this threshold -- which is higher than the OECD requirement -- in order to gain experience with the notification process. The threshold will be adjusted downward on January 1, 2003, to comply explicitly with the OECD requirements.)
  - Consult with the U.S. Department of Treasury in the event that a proposed capital project (tied or untied) may be financed with any combination of (1) USAID grants, loans, or guarantees, and (2) export credits (e.g., Export

Import Bank loans) or private sector financing. A consultation is required regardless of the amount of the capital project.

Both the DAC Recommendation and the OECD Arrangement have notification requirements, although the threshold and the coverage differ somewhat.

The following rules will help determine whether a proposed procurement action is subject to either of these international commitments.

- Whenever the procurement action is in a Least Developed Country (see Mandatory Reference, [Listing of Least Developed Countries](#)), review Section [221.3.1](#).
- Whenever the procurement action is a capital project (which may also be in an LDC), review Section [221.3.2](#).
- Whenever the procurement action is not in an LDC or is not a capital project (as defined in this chapter), no further action is necessary under this ADS chapter.

For background information, see the Additional Help documents, [Untying and Aid Efficiency](#) and [USAID Support for the Recommendation](#).

### **221.3.1 Summary of the Terms for the DAC Recommendation**

Effective Date – 01/01/2002

In the simplest of terms, DAC Members (including USAID) have agreed to procure specified goods and services with a value of \$900,000 or more from worldwide sources (source/origin code 935).

USAID's implementation of the DAC Recommendation to untie the procurement of specific categories of goods and services depends upon answers to the following three questions:

- Is the procurement benefiting (that is, providing resources to) a "least developed country"? (See Mandatory Reference, [Listing of the Least Developed Countries](#).)
- Is the value of the procurement destined for a "least developed country" equal to or greater than \$900,000?
- Is the procurement of the commodity or service covered by the Recommendation (operationally defined to include capital projects, capital equipment, and capital-related supplies, as well as other discrete "physical" commodity procurements)?

If the answer to each of these questions is "yes," the procurement action is covered by the DAC Recommendation, meaning that the origination Office or Mission must

designate it as source/origin code 935, unless there is a need to derogate from the Recommendation. In addition, USAID is required to provide information to the DAC (called notifications) on covered procurements of \$900,000 or more.

The responsibilities are as follows:

- The originating office or the Mission should untie the procurement (source/origin code 935), unless there is a derogation ([221.3.1.10](#)); and
- PPC will notify the DAC of the proposed procurement action based on information in the FedBizOpps pre-solicitation notice and additional information, as needed. The web site for FedBizOpps notices is <http://www.FedBizOpps.gov>.

A more detailed description of the implementation policies for the DAC Recommendation follows in sections 221.3.1.1 through 221.3.1.13.

#### **221.3.1.1 The DAC Recommendation to Untie Aid to the LDCs**

Effective Date – 01/01/2002

The United States, represented by USAID, has joined a consensus with Members of the DAC to untie [official development assistance \(ODA\)](#) to the world's LDCs to the greatest extent possible. DAC Members reached a consensus on the untying Recommendation at the April 2001 High Level Meeting of DAC Ministers.

#### **221.3.1.2 Geographic Scope**

Effective Date – 01/01/2002

The DAC Recommendation to untie ODA (source/origin code 935) applies only to the Least Developed Countries listed in Mandatory Reference, [Listing of the Least Developed Countries](#).

#### **221.3.1.3 Procurement Actions Covered by the Recommendation**

Effective Date – 01/01/2002

When USAID/W or a Mission initiates a procurement action in an LDC, it must determine whether the items to be procured are covered by the Recommendation and should be untied.

#### **221.3.1.4 Numerical Threshold**

Effective Date – 01/01/2002

The Recommendation applies to procurements of USAID financed activities with a value of Special Drawing Right (SDR) 700,000 or more in a Least Developed Country. (Under the current conversion rate between an SDR and a \$US, the threshold is about \$900,000.) The current conversion rate can be obtained at the following web site: <http://www.imf.org/external/fin.htm>.



#### **221.3.1.5 Covered Activities**

Effective Date – 01/01/2002

The following activities are covered by the Recommendation:

- Balance of payments and [structural adjustment support](#),
- [Debt forgiveness](#),
- [Sector](#) and [multisector program assistance](#),
- [Investment project aid](#),
- [Import and commodity support](#)
- [Commercial services contracts](#), and
- ODA to nongovernmental organizations for procurement related activities.

#### **221.3.1.6 Covered Categories of Procurement Action**

Effective Date – 01/01/2002

In order to make the coverage section operational for USAID, the following categories of procurement actions will be covered by the Recommendation.

- Capital projects;
- Capital equipment;
- Capital-related supplies and services; and
- Discrete “physical” commodities.

##### **a. Description of a Capital Project**

A capital project is a discrete activity. OECD methodology defines a “project” to include all the marginal costs of inputs (including the proposed investment) technically required to produce a discrete marketable output (e.g., services from a fully functional water/sewage treatment facility). Thus, a “project” may cover many individual contracts and would normally include the following: technical assistance for the bidding process, architectural and engineering design studies, construction of the physical infrastructure, and operations and maintenance of the facility. In operational terms, the OECD definition means that a capital project must not be split into individual components so as to bypass the [tied aid](#) rules. There is well-established case law in the OECD on project-splitting and considerable efforts have been made to deter this practice.

The sectors in which capital projects are likely to occur include – transport (roads, ports, and rail), power (generation and transmission), telecommunications, environmental technology, agriculture (irrigation), urban environment, water supply, wastewater treatment, information technology, and construction or reconstruction of physical facilities in any sector under any strategic objective.

**b. Capital Equipment**

Neither the DAC nor the OECD has an exact description of this term. However, as a starting point, based on the Federal Acquisition Regulations, capital equipment includes personal property of a capital nature (including equipment, machine tools, test equipment, furniture, vehicles, and accessory and auxiliary items) for use in manufacturing supplies, in performing services, or for any administrative or general plan purpose.

**c. Capital-Related Supplies and Services**

These items include the supplies or services necessary to install or erect capital equipment and the training of personnel in maintenance, operation and use of such equipment.

**d. Discrete “Physical” Commodities Covered**

Examples of commodities subject to the Recommendation include, but are not limited to machinery, plant and equipment, motor vehicles, locomotives, computers, environmental equipment and technology, medical equipment, pharmaceuticals, office supplies, telecommunications equipment, pesticides, and fertilizers.

*Special Considerations*

There are certain classes of commodities such as motor vehicles and pharmaceuticals where waivers are necessary to procure under source – origin code 935. The policies in this ADS chapter on untying do not override these existing waiver requirements. Although this ADS chapter encourages the untying of certain restricted categories of commodities, it is still necessary to obtain a waiver before undertaking the procurement. Policies on restricted commodities and waiver requirements are in [ADS 312](#). In the event that waiver authority is not sought or is not granted, USAID will be required to derogate ([221.3.1.10](#)).

**221.3.1.7 Exclusions From the Recommendation**

Effective Date – 01/01/2002

The following procurement actions or commodities do not have to be untied, based on USAID’s interpretation of the provisions of the Recommendation.

- Food aid (Title II and III);

- Transport, by vessel, of food aid;
- Technical assistance (other than commodities, services, and capital projects); and
- ODA to NGOs for non-procurement related activities (that is, overall grants in support of their programs).

Some broad examples of technical assistance activities that do not have to be untied include training, institution building, consulting services, and intellectual capacity building.

#### **221.3.1.8 Projects or Activities With Multiple Elements**

Effective Date – 01/01/2002

There may be situations where activities or projects have several elements. If this occurs, it will be necessary to review each discrete element to determine whether it satisfies the coverage and threshold criteria of the Recommendation. Thus, the Office or Mission may need to consult with PPC and GC. For example, a health activity or project may include a capacity building element along with a physical infrastructure component. The latter most likely will have to be notified.

#### **221.3.1.9 Ex Ante Notification of the Covered Procurement Action**

Effective Date – 01/01/2002

The notification process requires close coordination between PPC, GC, M/OP, and the originating office. [“Ex ante” notification](#) in the context of the DAC Recommendation is an advance notice of the planned procurement action.

PPC is required to provide information on procurement actions (untied aid offers), which is called a “notification”, to the DAC no fewer than 30 calendar days before the opening of the bidding period. However, this notification date does not correspond to any specific event in the USG’s procurement process. To make this operational, USAID will base its notifications to the DAC on the timing requirements for the FedBizOpps notice.

The notification process for procurements covered by the DAC Recommendation is as follows:

- The cognizant Contracting Officer, as part of the procurement process, will send a pre-solicitation notice of the planned procurement to FedBizOpps as required by the Federal Acquisition Regulation and/or Agency policy.
- The PPC Tied Aid Coordinator (TAC) will use the information in the electronic copy of the FedBizOpps notice to prepare the notification required by the DAC agreement.

- Since the notification must include all of the information listed in the Mandatory Reference, [DAC Ex Ante Notification Requirements](#), sometimes the PPC TAC will need additional information that is not included in the FedBizOpps notice. The PPC TAC will, as appropriate, contact the Contracting Officer or other responsible USAID official to complete the notification.
- The PPC TAC must prepare the notification and transmit it to the DAC no later than five working days from the initial posting of the FedBizOpps notice.

*Special Contracting Circumstances*

Whenever a covered action is not required to be advertised in FedBizOpps (e.g., a fixed amount reimbursement instrument, a grant to a PVO for an infrastructure activity, or contract action for which other than full and open competition has been authorized), the Contracting Officer or responsible official is still responsible for transmitting the information in the reference titled, [DAC Ex Ante Notification Requirements](#), to the PPC TAC (e-mail address "PPC Tied Aid Coordinator") before issuance or publication of the solicitation document, or when the justification for non-competition is approved – whichever occurs first. This must occur at least five working days before the issuance of the solicitation document or approval of the non-competitive justification.

This notification requirement also applies to all USAID-financed covered activities funded under host country procurement mechanisms. Missions that utilize contractors to manage the host country programs will need to ensure that the contractors are aware of and comply with the notification requirement. This means that -- if they are not creating pre-solicitation notices for posting to FedBizOpps -- they must send the information in the reference titled, [DAC Ex Ante Notification Requirements](#), to the PPC TAC (e-mail address "PPC Tied Aid Coordinator") at least five working days before the time that bidding commences.

### **221.3.1.10 Derogation**

Effective Date – 01/01/2002

USAID may, in exceptional circumstances, take measures inconsistent with the terms of the DAC Recommendation in situations involving overriding non-trade related development interests. The decision to derogate means that USAID has determined that is in the national interest of the United States to tie (procure goods and services in the U.S. (source/origin codes 000 and 941)) rather than follow the terms of the Recommendation.

#### **a. Derogation Considerations**

If the exports of goods and services (subject to the Recommendation) are for immediate humanitarian and emergency relief situations and speed is of the essence, there may be grounds for derogation.

If the proposed procurement action is not covered, it does not have to be untied per the DAC untying Recommendation. The USAID entity undertaking the procurement may, however, untie the action in accordance with [22 CFR 228](#) if there are foreign policy or other considerations requiring such action.

Overriding non-trade related interests may include, but are not limited to, situations where

- Foreign Assistance Act of 1961, as amended (FAA) legislation requires procurement from specified sources;
- It is in the foreign or international economic policy interests of the United States to do so; or
- There are emergency or special circumstances.

**b. Derogation Procedures**

Whenever a Bureau or Mission recommends that it is in the overriding national interest to derogate, the following procedures will apply:

- The Contracting Officer or the responsible official will inform PPC (e-mail address “PPC Tied Aid Coordinator”), as early as possible but before the publication of any pre-solicitation notice in FedBizOpps or, before the approval of any justification for non-competitive procedures, that USAID is likely to derogate from the terms of the Recommendation. The e-mail must contain the reason(s) for the derogation and the activities or commodities covered by the derogation.
- PPC will prepare the letter of derogation for the signature of the Assistant Administrator of PPC, in consultation with GC, M/OP, and the appropriate Bureau.
- PPC will send a letter from the AA/PPC to the Secretary – General of the OECD and to the DAC Chair with the reasons for the derogation. This letter should be sent before the solicitation is issued but no later than five working days after it is issued.

**221.3.1.11 Exchange of Information Procedures**

Effective Date – 01/01/2002

The Recommendation allows DAC Members to question other Members about specific aspects of their untied aid notifications concerning feasibility studies or architectural and engineering studies for capital projects. (The DAC calls these activities “investment related technical cooperation.”) This information can be obtained through an “exchange of information procedure.”

**a. USAID Inquiries on Other DAC Member Notifications**

USAID keeps track of DAC member notifications and queries when appropriate. The inquiry procedures are as follows:

- (1) The PPC TAC will check the DAC untied aid web site on a weekly basis, if not more frequently, to determine the most recent notifications.
- (2) USAID, in cooperation with Treasury, Commerce, and other USG agencies, will develop a priority list of sectors (and possibly other criteria) to determine which notifications should be the subject of an inquiry on a regular basis.
- (3) USAID (the TAC), acting on behalf of other USG agencies such as Treasury, Commerce, or the Export Import Bank, may send an inquiry to another DAC Member once an activity is notified officially.
- (4) The inquiry will contain questions related to the design elements of the proposed capital project as well as questions on the tying status of the feasibility study.
- (5) The questions will include, but are not limited to
  - Was investment related technical cooperation (IRTC) associated with the notification in the form of a feasibility study, or architectural and engineering study?
  - When was the original solicitation or Request for Proposal (RFP) issued?
  - When was the contract or grant awarded?
  - Who was it awarded to?
  - What are the affiliated companies, either in the donor country or foreign countries, that are co-winners?
  - Is a copy of the final feasibility study available and where can it be obtained?
- (6) The TAC will “post” the letter of inquiry on the DAC “public” untied web site.
- (7) Upon receipt of the information, the TAC will forward it to the appropriate USG agency(s) and also post it on the DAC “public” untied aid web site.

**b. Responses to Other DAC Member Inquiries**

USAID may receive an inquiry from another DAC member on an untied aid offer.

The PPC TAC will be the contact point for all inquiries. This will be noted in the untied aid notification.

Upon receipt of an inquiry, the PPC TAC will work with the originating office in preparing an appropriate response.

The TAC will respond to the DAC Member initiating the inquiry within 14 calendar days of receipt, as required by the Recommendation.

To the extent that any other employee of USAID receives an inquiry, those should be directed to the TAC via the Outlook e-mail address -- "PPC Tied Aid Coordinator."

**221.3.1.12 Information on Contract and Grant Awardees Under the DAC Recommendation for Covered Actions**

Effective Date – 01/01/2002

USAID is required to provide the DAC Secretariat with information on contract and grant awards related to the individual ex ante notifications under the DAC Recommendation for covered actions. This is to be done annually starting in calendar year 2003.

The PPC TAC (using information provided by M/OP, Procurement Support Division) will prepare a list of contract and grant awardees under the DAC Recommendation for each calendar year, starting in the year 2002. This list will be compiled in the first quarter of the subsequent calendar year and sent to the DAC by April 1<sup>st</sup> of that year. (Note: the list of awardees also includes Host Country awardees and those covered by "special contracting circumstances in this ADS chapter.)

The information required for this list comprises the name and address and country of incorporation of the firm awarded the contract (or the prime contractor, where a syndicate of firms is concerned).

As noted in section [221.3.1.13](#) of this ADS chapter, the TAC will develop a database of contract and grant awardees for the untied aid notifications.

**221.3.1.13 Reference Indicators Matrix**

Effective Date – 01/01/2002

PPC must develop an appropriate database of procurement actions to generate a "reference indicators matrix (RIM)." The RIM allows the DAC members and the Secretariat to track the untying efforts of each member and compare it to the performance profiles of other members.

The key data elements for the RIM include the volume of ODA that is tied and untied.

In order to generate the data for the RIM, PPC will, on an annual basis, compile the source/origin codes associated with each USAID procurement action. This will be used to determine USAID's overall tying and untying ODA percentages, which subsequently will be reported to the DAC.

### **221.3.2 Summary of the Terms for the OECD Arrangement**

Effective Date – 01/01/2002

The USG is a participant in the OECD Arrangement and USAID is, therefore, subject to Arrangement rules and procedures as are virtually all USG agencies that have international financing programs. This section summarizes the OECD Arrangement's "Tied Aid" rules for "trade-related" activities.

Once it is determined that the procurement action is "trade-related" (that is, operationally defined as a capital project), the next set of considerations concern notification and consultation.

- Whenever the originating Office/Mission is in the process of initiating a procurement for a capital project of \$2.6 million or more, PPC must provide certain information (called a "notification") describing this action to the OECD. This notification requirement applies to capital projects with source/origin codes 000, 935, and 941. (See the [Geographic Code Book](#).)
- PPC will use the information in the FedBizOpps pre-solicitation notice, supplemented with information from the Mission or originating office, as appropriate.
- Whenever the originating Office/Mission is in the process of planning any capital project (as defined in this ADS chapter) that may involve any combination of a grant, loan, or guarantee, and Export – Import Bank credit, private sector financing, or additional financing to complete, the Regional Legal Advisor or responsible official must contact PPC must via the "PPC Tied Aid Coordinator" Outlook mailbox. PPC, in consultation with GC and the appropriate Bureau, will review the proposed financial package for compliance with the OECD Arrangement.

A more detailed description of the implementation policies for the OECD Arrangement follows in sections 221.3.2.1 through 221.3.2.5.

#### **221.3.2.1 OECD Arrangement Requirements**

Effective Date – 01/01/2002

The Arrangement sets the rules for government financing and reporting requirements of "trade-related" activities (defined operationally by USAID as capital projects, capital



equipment, and capital-related commodity procurements) that are provided to developing countries. As noted in [221.6](#) (definitions), all such [trade-related activities](#) collectively are referred to as “capital projects.”

Some examples of trade-related activities that would be covered by the tied aid rules are those associated with manufacturing and industrial processes, power generation and distribution, telecommunications, water supply, wastewater treatment, transportation, construction and maintenance, and supplies of equipment.

#### **221.3.2.2 Description of a Capital Project**

Effective Date – 01/01/2002

A capital project can be a standalone activity or part of a broad-based activity. See [221.3.1.6](#) for the formal description of a capital project.

In some cases, capital projects may be a component of a much larger initiative. Some examples are (1) an education activity involving the purchase of capital equipment such as computers, (2) a health project requiring the purchase of medical equipment such as diagnostic medical equipment, and (3) the construction of a health facility. The “capital component” is a trade-related activity under the OECD rules and must be notified (see [221.3.2.4](#)).

#### **221.3.2.3 Geographic Scope**

Effective Date – 01/01/2002

The rules of the OECD Arrangement apply to all countries to which USAID provides assistance.

#### **221.3.2.4 OECD Ex Ante Notifications**

Effective Date – 01/01/2002

USAID is expected to provide “ex ante” (that is, before the solicitation is issued) notification to the OECD on all of USAID’s capital projects (for all source/origin codes 000, 935, and 941). The notification threshold through calendar year 2002 is \$2.6 million or more.

PPC is responsible for providing the necessary information to the Export Import Bank (EXIM) (which then will formally notify the OECD). The information that PPC needs for that notification is described in Mandatory Reference, [OECD Ex Ante Notification Requirements](#). PPC will use information supplied by the Bureau or Mission in the FedBizOpps pre-solicitation notice, together with supplemental information solicited from the originating office of Mission, to prepare the notification.

*Special Contracting Circumstances*

In the event that USAID finances a capital project that is not required to be advertised in FedBizOpps (e.g., a fixed amount reimbursement instrument, a grant to a PVO for an infrastructure activity, or contract action for which other than full and open competition has been authorized), the Contracting Officer or responsible official is still responsible for transmitting the information in the reference titled, [OECD Ex Ante Notification Requirements](#), to the PPC TAC (e-mail address "PPC Tied Aid Coordinator") before issuance or publication of the solicitation document, or when the justification for non-competition is approved – whichever occurs first. This must occur at least five working days before the issuance of the solicitation document or approval of the non-competitive justification.

This notification requirement also applies to all USAID-financed covered activities funded under host country procurement mechanisms. Missions that utilize contractors to manage the host country programs will need to ensure that the contractors are aware of and comply with the notification requirement. This means that -- if they are not creating pre-solicitation notices for posting to FedBizOpps -- they must send the information in the reference titled, [OECD Ex Ante Notification Requirements](#), to the PPC TAC (e-mail address "PPC Tied Aid Coordinator") at least five working days before the time that bidding commences.

Even if financing part of a "project" with a grant is contemplated, with the recipient being responsible for arranging financing for the remainder of the project, all financing sources (including financing by recipient) must be reported to ensure compliance with the OECD rules.

### **221.3.2.5 Tied Aid Consultation Procedures for Mixed Credits**

Effective Date – 01/01/2002

#### **a. Mixed Credits**

Under the Arrangement, there are some situations in which tied aid can not be provided by USAID (that is, when grants and loans are mixed in ways that undermine competition). The design of a capital project may involve, in one form or another, USAID grants, loans, or guarantees, and export credits or private sector financing. There is no simple way to determine beforehand whether the overall financial package is consistent with the OECD rules. This may have to be addressed on a case-by-case basis for the indefinite future. Consequently, operating units need to be sensitive to tied aid rules when designing capital projects and must consult with PPC when in doubt to ensure that USAID complies with tied aid rules. This consultation must take place well before any FedBizOpps or pre-solicitation notice so that advanced designs are not put on hold or shelved due to tied aid policy issues.

When USAID funding of a "project" is mixed (ex ante or ex post -- after the project is notified) with credit assistance from, for example, another USG agency such as EXIM, a mixed credit package is created and tied aid concerns arise. It has been long-standing USG policy not to initiate this type of mixed credit financing. The Arrangement looks at USG grant and credit assistance as a whole. The effect of mixing, say, USAID 100% concessional grant assistance with a market-based loan or other credit from another USG agency in the same capital project, could be to turn all USG assistance into concessional (mixed credit) financing barred by the Arrangement. The objective of the

Arrangement, it must be understood, is to ensure that officially (government) supported competition among OECD exporters is based on price and quality, and not on concessional financing from government sponsors.

**b. Consultation Requirements**

During the design phase of any capital project financed by a Mission with grant assistance that could be linked or associated with credit assistance, Bureaus and Missions must consult with PPC as early as possible to vet any tied aid concerns. It is essential to address the design of the financial package as early as possible, especially if

- Grants and loans/guarantees are combined,
- A USAID grant finances only a portion of a capital “project,” and
- Export credit agencies are considered as a possible source for the remaining financing.

PPC will bring GC, the appropriate Bureau, and the U.S. Treasury Department into problematic situations as appropriate. Bureaus and Missions must understand that the rules governing tied aid under the Arrangement, which are only briefly summarized in this ADS chapter, are complex. Hence, to ensure compliance with the Arrangement, consultation ordinarily will be needed in the situations involving credit assistance.

PPC will provide the originating Office or Mission with the feedback from the USAID/W – Treasury review. The originating office will then incorporate the USAID/W – Treasury input into the design of the “financial package” for the capital project.

**221.4 MANDATORY REFERENCES**

Effective Date – 01/01/2002

**221.4.1 External Mandatory References**

Effective Date – 01/01/2002

- a. [22 CFR 228, Rules on Source, Origin and Nationality for Commodities and Services Financed by USAID](#)
- b. [DAC Recommendation on Untying Official Development Assistance to the Least Developed Countries DCD/DAC\(2001\)12/REV1](#)
- c. [Foreign Assistance Act of 1961, as amended, Section 604\(a\) \(1\) \(A\)](#)

## **221.4.2 Internal Mandatory References**

Effective Date – 01/01/2002

- a. [ADS 312, Eligibility of Commodities](#)
- b. Action Memorandum of June 14, 2001
- c. Action Memorandum of April 24, 2001
- d. Action Memorandum of April 13, 2001
- e. Action Memorandum of February 14, 1998
- f. [DAC Ex Ante Notification Requirements](#)
- g. [Geographic Code Book \(or 22 CFR 228.03\)](#)
- h. Legal Memorandum of February 8, 2001
- i. [Listing of the Least Developed Countries](#)
- j. [OECD Ex Ante Notification Requirements](#)

## **221.5 ADDITIONAL HELP**

Effective Date – 01/01/2002

- a. [Untying and Aid Efficiency](#)
- b. [USAID Support for the Recommendation](#)

## **221.6 DEFINITIONS**

Effective Date – 01/01/2002

The terms and definitions listed below have been incorporated into the ADS Glossary. See the [ADS Glossary](#) for all ADS terms and definitions.

### **[balance of payments support](#)**

Resource flows in Development Assistance Committee (DAC) statistics are measured, as a rule, on a cash basis. (Chapter 221)

### **capital projects**

Capital projects include the architectural and engineering design study, construction of physical infrastructure, and operations and maintenance of the facility. In general, capital projects include the following types of activities: transport (roads, ports, and rail), power (generation and transmission), telecommunications, environmental technology, agriculture (irrigation and infrastructure), urban environment, water supply, wastewater

treatment, information technology, and construction or reconstruction of physical facilities in any sector under any strategic objective. (Chapter 221)

**commercial services contracts**

Contracts let on a commercial basis for the running or management of a utility or distribution network. (Chapter 221)

**commodity**

Any material, article, supply, goods, or equipment. (Chapters 221, 310, 312)

**commodity-related services**

Delivery services and/or incidental services. (Chapter 221)

**contract actions**

The steps necessary to conduct the procurement of goods and services covered by the **Development Assistance Committee (DAC)** Recommendation. (Chapter 221)

**debt forgiveness**

All actions relating to debt (forgiveness, swaps, buy-backs, rescheduling, and refinancing) (Chapter 221)

**Development Assistance Committee (DAC)**

The committee of the Organization for Economic Cooperation and Development that deals with development cooperation matters. (Chapter 221)

**ex ante notification**

The provision to the Development Assistance Committee (DAC) of information in the Mandatory Reference titled, DAC Ex Ante Notification Requirements, on the untied aid offers covered by the DAC Recommendation. A parallel definition applies to the Organization for Economic Cooperation and Development (OECD) Ex Ante Notification. (Chapter 221)

**FedBizOpps notice**

This is the required notice replacing the Commerce Business Daily (CBD) pre-solicitation notices. The format for that notice is part of the same FedBizOpps site where the notice is created and posted by authorized users. (Chapter 221)

**import and commodity support**

Import and commodity support includes contributions for general development purposes without sector allocation, with or without restrictions on the specific use of the funds (and irrespective of any control by the donor of the use of counterpart funds). Funds are supplied on the general condition that they be used for capital projects at the recipient's choice, but not subject to agreement by the donor. (Chapter 221)

**investment project aid**

Investment project aid comprises (1) schemes to increase and/or improve the recipient's stock of physical capital and (2) financing the supply of goods and services in support of such schemes. The contribution of planners, engineers, technicians, etc. to the design and implementation of projects (that is, investment-related technical cooperation) should be included as part of the capital project concerned. The category also covers integrated development programs (e.g. rural or urban development) that contain large investment components. (Chapter 221)

**least developed countries**

Those listed in the annual reports of the U.N. Conference on Trade and Development (UNCTAD) Secretariat and of the Chairman of the Development Assistance Committee (DAC) of the Organization for Economic Cooperation and Development (OECD). (Chapters 221, 310)

**multisector-program assistance**

Multisector-program assistance includes support for projects that straddle several sectors and covers only those actions that cannot be identified with a specific sector. (Chapter 221)

**Official Development Assistance (ODA)**

Grants or loans to countries and territories on Part I of the Development Assistance Committee (DAC) List of Aid Recipients (developing countries) that are undertaken by the official sector, with the promotion of economic development and welfare as the main objective, and at concessional financial terms (if a loan has a grant element of at least 25 percent). (Chapter 221)

**Official Development Assistance (ODA) to Nongovernmental Organizations NGOs**

Official funds paid over to national and international non-governmental organizations for use at the latter's discretion. Official funds made available to NGOs for use on behalf of the official sector, in connection with purposes designated by the official sector, or known to and approved by the official sector. (Chapter 221)

**procurement action**

This means the use of USAID direct contracts, USAID funded host country contracts, and contracts awarded by non-governmental organizations (NGOs) that receive grants from USAID (but not the grant awards themselves) to purchase goods and services above the threshold covered by the Recommendation. The procurement action, in this case, only covers the prime contractor. An activity covered by the Development Assistance Committee (DAC) Recommendation, such as a capital project, requires that each distinct procurement above the threshold be untied and notified. (Chapter 221)

**projects**

According to OECD methodology projects include all the marginal costs of inputs (including the proposed investment) technically required to produce a discrete marketable output (for example, services from a fully functional water/sewage treatment

facility). Thus, a “project” may cover many individual contracts and would normally include the following: technical assistance for the bidding process, architectural and engineering design studies, construction of the physical infrastructure, and operations and maintenance of the facility. (Chapter 221)

**sector program assistance**

Contributions to carry out wide-ranging development plans in a defined sector such as agriculture, education, transportation, etc. Assistance is made available “in cash” or “in kind,” with or without restrictions on the specific use of the funds, but on the condition that the recipient executes a development plan in favor of the sector concerned. (Chapter 221)

**solicitation**

This is the term used by the U.S. Government to refer to the assorted means by which offers or proposals are sought for government requirements and programs. Requests for Proposals (RFPs), Invitations for Bids (IFBs), Tenders, Requests for Applications (RFAs), Annual Program Statements (APSSs), and Requests for Quotes (RFQs) are all examples of types of government solicitations. (Chapter 221)

**Special Drawing Rights (SDRs)**

An artificial currency unit of the International Monetary Fund (IMF) defined as a basket of national currencies (Euro, Japanese yen, Pound sterling, and the U.S. dollar). The value of the SDR is posted on the IMF’s web site ([www.imf.org/external/np/tre/sdr/basket.htm](http://www.imf.org/external/np/tre/sdr/basket.htm)). (Chapter 221)

**structural adjustment support**

Any sector program aid that is financed in association with or related to the structural adjustment programs of the World Bank and the International Monetary Fund (IMF). (Chapter 221)

**tied aid**

Refers to procurement actions that, as an operational matter, have been assigned a source/origin code of 000, 899, or 941 and are loans or grants which are either in effect tied to procurement of goods and services from the donor country or are subject to procurement modalities implying limited geographic procurement eligibility. (Chapter 221)

**trade-related activities**

Capital goods, capital equipment, and capital-related commodity procurements and services inherent in the operation of a capital project. All such trade-related activities collectively are referred to as “capital projects.” (Chapter 221)

**untied aid**

Refers to procurement actions that, as an operational matter, have been assigned a source/origin code of 935 and are loans or grants that are freely and fully available to finance procurement from substantially all developing countries and from the

Organization for Economic Cooperation and Development (OECD) countries. (Chapter 221)

221\_011402\_w100803